

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAWNE LULEFF, On Behalf of herself and
all others similarly situated

Plaintiff,

vs.

BANK OF AMERICA, N.A. and
BANK OF AMERICA CORPORATION

Defendants.

Civil Action No. 06-cv-01435-JGK

DOUGLAS WAYNE MARTINEZ,

Plaintiff,

vs.

BANK OF AMERICA, N.A. and
BANK OF AMERICA CORPORATION

Defendants.

Civil Action No. 08-cv-04964-JGK

**NOTICE OF MOTION AND PLAINTIFF MARTINEZ'S MOTION FOR
CONSOLIDATION PURSUANT TO FED. R. CIV. P. 42(a)**

PLEASE TAKE NOTICE that plaintiff Douglas Wayne Martinez, the plaintiff in *Martinez v. Bank of America, N.A., et al.*, 1:08-cv-04964-JGK (S.D.N.Y.) (the “*Martinez Action*”), on behalf of his aunt, Irene Inez Zetsche, pursuant to a power of attorney, respectfully moves this Court, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, for an Order consolidating the *Martinez Action* with *Luleff v. Bank of America, N.A., et al.*, 1:06-cv-01435-JGK (S.D.N.Y.) (the “*Luleff Action*”) (collectively, the “*Actions*”).

As grounds and in support thereof, plaintiff Martinez states as follows:

1. The Actions involve common questions of law, and allege the same causes of action and the *Martinez* Action does not allege any new causes of action;
2. The Actions involve common questions of fact because both arise from the same or substantially the same conduct that gives rise to the claims in both Actions;
3. The same defendants are named in both Actions and the *Martinez* Action does not name any new defendants; and
4. The plaintiff classes alleged in both Actions are substantially the same and include the same members.

Based upon the foregoing, and for the reasons set forth in the accompanying Memorandum of Law in Support of Plaintiff Martinez's Motion for Consolidation Pursuant to Fed. R. Civ. P. 42(a), convenience and economy will be promoted by consolidation of the Actions, and consolidation will save time and avoid unnecessary costs and inconvenience to the parties, witnesses and the Court.

WHEREFORE, Plaintiff requests that its motion for consolidation be granted.

Dated: June 16, 2008

Respectfully submitted,

BROWER PIVEN

A Professional Corporation

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